

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1296 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

SHARDA CINEMA

Versus

DIST MAGISTRATE & COLLECTOR

Appearance:

MR SR SHAH for Petitioners

MR BD DESAI, AGP for Respondents

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 05/05/2000

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner, a partnership firm running a cinema in Jamnagar District has challenged the order dated 2.2.1989 passed by the State Government in appeal against the order dated 27.1.1989 of the District Magistrate.

2. The District Magistrate had imposed the penalty of suspension of the petitioner's licence for running the cinema hall, for a period of one week on the ground of violation of Rule 123 of the Bombay Cinema Regulations Rules, 1954. The State Government modified the said

order by reducing the period of suspension from one week to two days. It is against the aforesaid order of the State Government that the petitioner has filed the present petition.

3. Various contentions have been urged for assailing the order of the appellate authority. It is submitted that there was no violation of Rule 123 as the petitioner had not admitted in the auditorium greater number of persons than the maximum number of persons mentioned in the licence. It is submitted that although excess tickets were issued by the booking clerk, when the door keeper detected this fact, the persons who had purchased the tickets in excess were refunded the amount and that the Inspecting Officer had merely looked at the record showing issuance of tickets, but had not actually verified the number of persons in the auditorium. It is also submitted that although the petitioner had refunded the amount since the tickets were already issued, the petitioner did not want to tamper with the record and, therefore, even entertainment tax was paid on the basis of the number of tickets issued, even though the amount of excess tickets was refunded. It is submitted that in any view of the matter, when the show cause notice was issued by the District Magistrate on 12.11.1988, the licence in force was valid for the period upto 31.12.1988. However, the suspension order was passed in respect of the licence which was issued with effect from 1.1.1989. Strong reliance is placed on the decision of this Court in N.H. Shethna vs. Dy. Commissioner of Police, 3 GLR 66 as confirmed by the Apex Court in AIR 1967 SC 1036.

4. Mr BD Desai, learned AGP for the respondents has submitted that the authorities have given a finding of fact against the petitioner and that, therefore, no interference of this Court is called for under Article 226 of the Constitution. However, the learned AGP was not in a position to dispute the legal proposition canvassed by the learned counsel for the petitioner regarding applicability of the principle laid down by this Court in the case of N.H. Shethna as confirmed by the Apex Court in AIR 1967 SC 1036.

5. Having heard the learned counsel for the parties, this Court is of the view that the petition deserves to be allowed on the short ground that the licence for which the show cause notice was issued was valid upto 31.12.1988 and that, therefore, the licence issued with effect from 1.1.1989 could not have been suspended as fresh proceedings were not issued after issuance of the licence. The matter appears to be squarely covered by

the judgment of the Apex Court in AIR 1967 SC 1036.

6. In view of the above discussion, the petition is allowed. The impugned orders at Annexures "B", "C" and "D" are hereby quashed and set aside. Rule is made absolute. In the facts and circumstances of the case, there shall be no order as to costs.

May 5, 2000 (M.S. Shah, J.)

sundar/-